

0025

*OK Incoming
C/015/0019*

From: Priscilla Burton
To: OGMCOAL
Date: 7/3/2008 11:20 AM
Subject: 015019\Incoming
Place: OGMCOAL
Attachments: FW: Scan if 30 CFR sections re. challenge

Debbie Feheley communication with Scott Child 8/3/2007
RE: challenge of audit violations linked to PacifiCorps.

From: "Katie Kirkland" <kkirkland@osmre.gov>
To: "Priscilla Burton" <priscillaburton@utah.gov>
Date: 7/2/2008 7:08 AM
Subject: FW: Scan if 30 CFR sections re. challenge
Attachments: 30 CFR sections.pdf

Dear Ms. Burton:

I am forwarding a 8/3/07 email with attachment that Debbie Feheley emailed Mr. Child.

Katie Kirkland

Investigations Specialist

Office of Surface Mining Reclamation and Enforcement,

AVS Office

2679 Regency Road

Lexington, Kentucky 40503

Email: kkirkland@osmre.gov

Phone: (859) 260-3931

Fax: (859) 260-8418

From: Debbie Feheley
Sent: Friday, August 03, 2007 2:05 PM
To: scott.child@pacificorp.com
Cc: Pam Grubaugh-Littig; Katie Kirkland; Stephanie Varvell
Subject: FW: Scan if 30 CFR sections re. challenge

Mr. Child: It was a pleasure to speak with you and I hope we addressed all your questions. Attached are challenge provisions in our regulations for your review. They start at Section 773.25 and go through 773.28.

I recommend Mr. Leighton pursue this option in particular if Pacificorp does not have any pending permit actions ready for immediate approval. We have already pulled some documentation we have on file here relating to Coal Junction and Alumbaugh Coal and will be ready to assign this to one of our Field Investigators to handle.

Look forward to hearing from you and when I get some payoff figures from OSM Denver, I will submit that information to you as well.

You can contact me by email dfeheley@osmre.gov or by phone 800.643.9748.

From: Katie Kirkland
Sent: Friday, August 03, 2007 1:52 PM
To: Debbie Feheley
Cc: Stephanie Varvell
Subject: Scan if 30 CFR sections re. challenge

Katie Kirkland
Investigations Specialist
Office of Surface Mining Reclamation and Enforcement,
AVS Office
2679 Regency Road
Lexington, Kentucky 40503
(859) 260-8424 x467



Code of Federal Regulations

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Part 700 to End

Revised as of July 1, 2005

Mineral Resources

(f) After we serve you with a notice of proposed suspension or rescission under this section, we will take action under § 773.23 of this part.

(g) The regulations for service at § 843.14 of this chapter, or the State regulatory program equivalent, will govern service under this section.

(h) The times specified in paragraphs (b) and (c) of this section will apply unless you obtain temporary relief under the procedures at 43 CFR 4.1376 or the State regulatory program equivalent.

[65 FR 79665, Dec. 19, 2000]

§ 773.23 Suspension or rescission requirements for improvidently issued permits.

(a) Except as provided in paragraph (b) of this section, we, the regulatory authority, must suspend or rescind your permit upon expiration of the time specified in § 773.22(b) or (c) of this part unless you submit evidence and we find that—

(1) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2) You or your operator no longer own or control the relevant operation;

(3) Our finding for suspension or rescission was in error;

(4) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);

(5) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6) You are pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).

(b) If you have requested administrative review of a notice of proposed suspension or rescission under § 773.22(e) of this part, we will not suspend or rescind your permit unless and until the Office of Hearings and Appeals or its State counterpart affirms our finding

that your permit was improvidently issued.

(c) When we suspend or rescind your permit under this section, we must—

(1) Issue you a written notice requiring you to cease all surface coal mining operations under the permit; and

(2) Post the notice at our office closest to the permit area and on the AVS Office Internet home page (Internet address: <http://www.avs.osmre.gov>).

(d) If we suspend or rescind your permit under this section, you may request administrative review of the notice under the procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority). Alternatively, you may seek judicial review of the notice.

[65 FR 79665, Dec. 19, 2000]

§ 773.25 Who may challenge ownership or control listings and findings.

You may challenge a listing or finding of ownership or control using the provisions under §§ 773.26 and 773.27 of this part if you are—

(a) Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;

(b) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under §§ 773.21 or 774.11(f) of this subchapter; or

(c) An applicant or permittee affected by an ownership or control listing or finding.

[65 FR 79666, Dec. 19, 2000]

§ 773.26 How to challenge an ownership or control listing or finding.

This section applies to you if you challenge an ownership or control listing or finding.

(a) To challenge an ownership or control listing or finding, you must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials you wish to provide under § 773.27(b) of this part, to the regulatory authority, as identified in the following table.

If the challenge concerns a . . .	Then you must submit a written explanation to . . .
(1) Pending Federal permit application or Federally issued permit.	OSM.
(2) Pending State permit application or State-issued permit	the State regulatory authority with jurisdiction over the application or permit.

(b) The provisions of this section and of §§ 773.27 and 773.28 of this part apply only to challenges to ownership or control listings or findings. You may not use these provisions to challenge your liability or responsibility under any other provision of the Act or its implementing regulations.

(c) When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

(d) A regulatory authority responsible for deciding a challenge under paragraph (a) of this section may request an investigation by the AVS Office.

[65 FR 796676, Dec. 19, 2000]

§ 773.27 Burden of proof for ownership or control challenges.

This section applies to you if you challenge an ownership or control listing or finding.

(a) When you challenge a listing or finding of ownership or control of a surface coal mining operation, you must prove by a preponderance of the evidence that you either—

(1) Do not own or control the entire operation or relevant portion or aspect thereof; or

(2) Did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period.

(b) In meeting your burden of proof, you must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. The materials presented in connection with your challenge will become part of the permit file, an investigation file, or another public file. If you request, we will hold as confidential any information you submit under

this paragraph which is not required to be made available to the public under § 842.16 of this chapter (when OSM is the regulatory authority) or under § 840.14 of this chapter (when a State is the regulatory authority).

(c) Materials you may submit in response to the requirements of paragraph (b) of this section include, but are not limited to—

(1) Notarized affidavits containing specific facts concerning the duties that you performed for the relevant operation, the beginning and ending dates of your ownership or control of the operation, and the nature and details of any transaction creating or severing your ownership or control of the operation.

(2) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.

(3) Certified copies of documents filed with or issued by any State, municipal, or Federal governmental agency.

(4) An opinion of counsel, when supported by—

(i) Evidentiary materials;

(ii) A statement by counsel that he or she is qualified to render the opinion; and

(iii) A statement that counsel has personally and diligently investigated the facts of the matter.

[65 FR 79666, Dec. 19, 2000]

§ 773.28 Written agency decision on challenges to ownership or control listings or findings.

(a) Within 60 days of receipt of your challenge under § 773.26(a) of this part, we, the regulatory authority identified under § 773.26(a) of this part, will review and investigate the evidence and explanatory materials you submit and any other reasonably available information bearing on your challenge and issue a written decision. Our decision must state whether you own or control

the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.

(b) We will promptly provide you with a copy of our decision by either—

(1) Certified mail, return receipt requested; or

(2) Any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, or its State regulatory program counterparts.

(c) Service of the decision on you is complete upon delivery and is not incomplete if you refuse to accept delivery.

(d) We will post all decisions made under this section on AVS and on the AVS Office Internet home page (Internet address: <http://www.avs.osmre.gov>).

(e) Any person who receives a written decision under this section, and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at 43 CFR 4.1380 through 4.1387 or, when a State is the regulatory authority, the State regulatory program counterparts, before seeking judicial review.

(f) Following our written decision or any decision by a reviewing administrative or judicial tribunal, we must review the information in AVS to determine if it is consistent with the decision. If it is not, we must promptly revise the information in AVS to reflect the decision.

[65 FR 79666, Dec. 19, 2000]

PART 774—REVISION; RENEWAL; TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS; POST-PERMIT ISSUANCE REQUIREMENTS; AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL, AND VIOLATION INFORMATION

Sec.

774.1 Scope and purpose.

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774.12 Post-permit issuance information requirements for permittees.

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774.15 Permit renewals.

774.17 Transfer, assignment, or sale of permit rights.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 44395, Sept. 29, 1983, unless otherwise noted.

§ 774.1 Scope and purpose.

This part provides requirements for revision; renewal; transfer, assignment, or sale of permit rights; entering and updating information in AVS following the issuance of a permit; post-permit issuance requirements for regulatory authorities and permittees; and other actions based on ownership, control, and violation information.

[65 FR 79667, Dec. 19, 2000]

§ 774.9 Information collection.

(a) Under the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. Regulatory authorities will use this information to: (1) Determine if the applicant meets the requirements for revision; renewal; transfer, assignment, or sale of permit rights;

(2) Enter and update information in AVS following the issuance of a permit; and

(3) Fulfill post-permit issuance requirements and other obligations based on ownership, control, and violation information. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB clearance number for this part is 1029-0116.

(b) We estimate that the public reporting burden for this part will average 8 hours per response, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation